

**ORIGINAL**

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E-filing

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

JOE WARD,

Plaintiff,  
 v.

ROBERT L. FENTON, individually and as  
 Trustee of the ROBERT L. FENTON  
 SEPARATE PROPERTY TRUST, and  
 MILTON FENTON, as Trustee of the  
 FENTON FAMILY TRUST and as Trustee of  
 TRUST B, a Subtrust of the Fenton Family  
 Trust, dba DEAN CREEK RESORT, and  
 DOES ONE to FIFTY, inclusive,

Defendants.

Case No. **10**  
**0918**  
Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF  
 AND DAMAGES: DENIAL OF CIVIL  
 RIGHTS OF A DISABLED PERSON IN  
 VIOLATION OF THE AMERICANS WITH  
 DISABILITIES ACT OF 1990; VIOLATION  
 OF CALIFORNIA'S CIVIL RIGHTS  
 STATUTES

JURY TRIAL REQUESTED

Plaintiff JOE WARD complains of defendants ROBERT L. FENTON, individually and  
 as Trustee of the ROBERT L. FENTON SEPARATE PROPERTY TRUST, and MILTON  
 FENTON, as Trustee of the FENTON FAMILY TRUST and as Trustee of TRUST B, a  
 Subtrust of the Fenton Family Trust, dba DEAN CREEK RESORT, and DOES ONE to  
 FIFTY, inclusive, and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 USC § 1331 for violations  
 of the *Americans with Disabilities Act of 1990*, (42 USC § 12101, et seq.) Pursuant to  
 pendant jurisdiction, attendant and related causes of action, arising from the same facts, are

also brought under California law, including, but not limited to, violations of **California Health & Safety Code** § 19955, *et seq.*, including **California Code of Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55.

2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district, in Redway, Humboldt County, California, and that Plaintiff's causes of action arose in this district.

### **INTRODUCTION**

3. **DEAN CREEK RESORT** is located at 4112 Redwood Drive, Redway, California. Said Motel and RV park is owned and operated by defendants **ROBERT L. FENTON, MILTON FENTON, and DOES ONE to FIFTY, inclusive**.

4. Defendants **ROBERT L. FENTON, MILTON FENTON, and DOES ONE to FIFTY, inclusive**, operate an establishment for services to the public and at which Defendants failed to provide barrier free access to said establishment in conformity with both Federal and California legal requirements. Further, Defendants failed to provide compliance as follows:

#### **Parking and Exterior**

- 1) There is no accessible parking or van accessible parking in the motel's parking area in violation of California Title 24 §1129B.1 (Table 11B-6), 1129B.4.2; ADAAG 4.1.2 (5) (a), 4.1.2(5) (b).
- 2) There are no access aisles in the motel's parking area in violation of California Title 24 §1129B.4.1 (Fig. 11B-18B); ADAAG 4.6.3.
- 3) There is no accessible or tow way signage in the motel's parking area in violation of California Title 24 §1129B.5 (Fig. 11B-18B), ADAAG 4.6.4.
- 4) The motel pool is without an accessible means of entry in violation of California Title 24 §1104B.4.3, 1111B.3; ADAAG 15.8.2.

#### **Motel Interior**

- 5) The lobby of the motel has insufficient maneuvering space for wheel chair occupants in violation of California Title 24 §1118B.3 (Fig. 11B-12), 1118B.4.2; ADAAG 4.2.3 (Fig. 3(a)), 4.2.4.2
- 6) Plaintiff believes and therefore alleges there are no accessible rooms for wheel chair occupants and Defendant lacks a policy or procedure for keeping a room available in

violation of California Title 24 §1111B.4.2, Table 11B-3,  
1111B.4, ADAAG 9.1.2.

The above barriers interfered with Plaintiff's access of the facilities and continue to deter Plaintiff from visiting said facilities, and as a legal result, Plaintiff **JOE WARD** suffers violations of his civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has and will suffer embarrassment and humiliation.

#### FACTUAL ALLEGATIONS

5. Plaintiff, **JOE WARD**, is, and at all times relevant to this Complaint is, a "physically handicapped person," "physically disabled person," and a "person with a disability," as these terms are used under California law and under federal laws including, but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms "physically handicapped person," "physically disabled person," and a "person with a disability" will be used interchangeably throughout this Complaint.) Plaintiff is a "person with a disability" as defined by all applicable California and United States' laws. Plaintiff, **JOE WARD**, is severely limited in the use of his legs.

6. Defendants **ROBERT L. FENTON, MILTON FENTON, and DOES ONE to FIFTY, inclusive**, at all times relevant herein were and are the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of public facilities known as the "**DEAN CREEK RESORT**" located at Redway, California, subject to the requirements of California state law requiring full and equal access to public facilities pursuant to ***California Health & Safety Code*** §19955, *et seq.*, ***California Civil Code*** §§51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title III of the ***Americans with Disabilities Act of 1990***, and to all other legal requirements referred to in this Complaint. Plaintiff does not know the relative responsibilities of defendants in the operation of the facilities herein complained of, and alleges a joint venture and common enterprise by all such defendants.

7. Defendants **ROBERT L. FENTON, MILTON FENTON, and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred to collectively as "defendants"), at all times relevant herein were and are owners, possessors, builders and keepers of the "**DEAN CREEK RESORT**" in Redway, California.



1           8. Defendants **ROBERT L. FENTON, MILTON FENTON, and DOES ONE to**  
2 **FIFTY, inclusive** are the owners and operators of the subject "**DEAN CREEK RESORT**" at all  
3 times relevant to this Complaint. Plaintiff is informed and believes that each of the defendants  
4 herein is the agent, employee or representative of each of the other defendants, and  
5 performed all acts and omissions stated herein within the scope of such agency or  
6 employment or representative capacity and is responsible in some manner for the acts and  
7 omissions of the other defendants in legally causing the damages complained of herein, and  
8 have approved or ratified each of the acts or omissions of each other defendant, as herein  
9 described.

10           9. Plaintiff, **JOE WARD**, does not know the true names and capacities of  
11 defendants **ROBERT L. FENTON, MILTON FENTON, and DOES ONE to FIFTY, inclusive**,  
12 their business capacities, their ownership connection to the property and business, nor their  
13 relative responsibilities in causing the access violations herein complained of, and alleges a  
14 joint venture and common enterprise by all such defendants. Plaintiff is informed and believes  
15 that each of the defendants herein, including **DOES ONE to FIFTY, inclusive**, is the agent,  
16 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,  
17 joint venturer, partner, and associate, or such similar capacity, of each of the other defendants,  
18 and was at all times acting and performing, or failing to act or perform, with the authorization,  
19 consent, permission or ratification of each of the other defendants, and is responsible in some  
20 manner for the acts and omissions of the other defendants in legally causing the violations and  
21 damages complained of herein, and have approved or ratified each of the acts or omissions of  
22 each other defendant, as herein described. Plaintiff will seek leave to amend this Complaint  
23 when the true names, capacities, connections and responsibilities of defendants **ROBERT L.**  
24 **FENTON, MILTON FENTON, and DOES ONE to FIFTY, inclusive**, are ascertained.

25           10. Plaintiff is informed and believes that all named defendants, including **DOES**  
26 **ONE to FIFTY, inclusive**, conspired to commit the acts described herein, or alternatively,  
27 aided and abetted one another in the performance of the wrongful acts hereinafter alleged.

28           11. Defendants **ROBERT L. FENTON, MILTON FENTON, and DOES ONE to**

1 FIFTY, inclusive, are the owners and operators of the "DEAN CREEK RESORT" located at  
2 Redway, California. This motel and RV park, including, but not limited to, parking spaces and  
3 access aisles and access routes, are each a part of a "public accommodation or facility"  
4 subject to the requirements of *California Health & Safety Code* §19955, *et seq.*, and of  
5 *California Civil Code* §§51, 52(a), 54, 54.1, *et seq.* On information and belief, this "DEAN  
6 CREEK RESORT" was constructed after 1990, which has subjected the "DEAN CREEK  
7 RESORT" to handicapped access requirements per *California Health & Safety Code*  
8 §19959, and applicable portions of *California Code of Regulations*, Title 24, (the State  
9 Building Code).

10 12. On or about September 2, 2009, Plaintiff, JOE WARD, visited the "DEAN  
11 CREEK RESORT" in Redway, California, for the purpose of staying the night. Defendants  
12 ROBERT L. FENTON, MILTON FENTON, and DOES ONE to FIFTY, inclusive, interfered  
13 with Plaintiff's access to the "DEAN CREEK RESORT" as set forth in Paragraph 4 above.

14 Said acts and omissions denied Plaintiff legal handicapped access to the "DEAN  
15 CREEK RESORT" according to federal and state law.

16 13. Plaintiff's home, in Redway, is approximately 3 miles from the "DEAN CREEK  
17 RESORT" in Redway, California. Plaintiff travels regularly to Redway for pleasure and  
18 business. Plaintiff intends to return to "DEAN CREEK RESORT" in Redway, California, when  
19 this public accommodation is made accessible.

20 14. Plaintiff encountered and/or is informed and believes that the following  
21 architectural barriers, which violate the requirements of the *California Code of Regulations*  
22 Title 24 and *ADAAG*, existed and continue to exist thereby denying Plaintiff and those similarly  
23 situated full and equal access to the subject public facility as set forth in Paragraph 4 above.

24 15. Defendants, and each of them, discriminated against Plaintiff, JOE WARD, on  
25 the basis of his physical disability, and interfered with his access to the "DEAN CREEK  
26 RESORT" establishment, in violation of both California law including, but not limited to,  
27 *California Civil Code* §§51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of  
28 Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision

1 of the ***Americans with Disabilities Act of 1990***.

2 16. As a result of the actions and failure to act of defendants, and each of them, and  
3 as a result of the failure to provide appropriate accessible parking, proper signage, proper  
4 accessible entryways, and accessible accommodations for a motel and RV park, Plaintiff, **JOE**  
5 **WARD**, suffered and will suffer a loss of his civil rights to full and equal access to public  
6 facilities, and further suffered and will suffer emotional distress, mental distress, mental  
7 suffering, mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin,  
8 disappointment and worry, expectedly and naturally associated with a person with a disability  
9 being denied access to a public accommodation, all to his damages as prayed hereinafter in  
10 an amount within the jurisdiction of this court.

11 **I. FIRST CAUSE OF ACTION:**

12 VIOLATION OF ***THE AMERICANS WITH DISABILITIES ACT OF 1990***  
13 (42 **USC** §12101 *et seq.*)

14 17. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
15 the allegations contained in paragraphs 1 through 16 of this Complaint and incorporates them  
16 herein as if separately repled.

17 18. Pursuant to law, in 1990 the United States Congress made findings per 42 **USC**  
18 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully  
19 protect 43 million Americans with one or more physical or mental disabilities; [that] historically  
20 society has tended to isolate and segregate individuals with disabilities; [that] such forms of  
21 discrimination against individuals with disabilities continue to be a serious and pervasive social  
22 problem; [that] the nation's proper goals regarding individuals with disabilities are to assure  
23 equality of opportunity, full participation, independent living and economic self-sufficiency for  
24 such individuals; [and that] the continuing existence of unfair and unnecessary discrimination  
25 and prejudice denies people with disabilities the opportunity to compete on an equal basis and  
26 to pursue those opportunities for which our free society is justifiably famous.

27 19. Congress stated as its purpose in passing the ***Americans with Disabilities Act***  
28 ***of 1990*** (42 **USC** §12102):

It is the purpose of this act (1) to provide a clear and comprehensive



national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

20. As part of the ***Americans with Disabilities Act of 1990***, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (42 **USC** §12181, *et seq.*). Among the public accommodations identified for purposes of this title were "an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor; . . ."

21. Pursuant to 42 **USC** §12182,

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

22. Among the general prohibitions against discrimination were included in 42 **USC** §12182(b)(1)(A)(i):

**Denial of participation.** It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

23. Among the general prohibitions against discrimination were included in 42 **USC** §12182(b)(1)(E):

**Association** -- It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

The acts of defendants set forth herein were a violation of Plaintiff's rights under the ADA,

Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 et seq.

24. Among the general prohibitions against discrimination were included in 42 **USC** §12182(b)(2)(A)(i) and 42 **USC** §12182(b)(2)(A)(ii):

**Discrimination.** For purposes of subsection (a), discrimination includes -

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

25. Plaintiff alleges that constructing the eligibility requirements, policies, practices and procedure for entry to the "**DEAN CREEK RESORT**" facility by persons with disabilities and their companions as established by the defendants can be simply modified to eliminate disparate and discriminatory treatment of persons with disabilities by properly constructing barrier free handicapped access for safe and full and equal enjoyment of the "**DEAN CREEK RESORT**" as that enjoyed by other people.

26. The specific prohibition against retaliation and coercion is included in the **Americans With Disabilities Act of 1990** §503(b) and the *Remedies and Procedures* in §503(c):

(b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) Remedies and Procedure. - The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to Title I, Title II and Title III, respectively.

27. Among the specific prohibitions against discrimination were included, in 42 **USC** §12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers



1 that are structural in nature, in existing facilities...where such removal is readily achievable,"  
 2 and (v) "where and entity can demonstrate that the removal of a barrier under clause (iv) is not  
 3 readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or  
 4 accommodations available through alternative methods if such methods are readily  
 5 achievable." The acts of Defendants set forth herein were a violations of Plaintiff's rights under  
 6 the "ADA," Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36,  
 7 *et seq.*

8 28. The removal of the barriers complained of by Plaintiff as hereinabove alleged  
 9 were at all times after 1990 "readily achievable." On information and belief, if the removal of all  
 10 the barriers complained of here together were not "readily achievable," the removal of each  
 11 individual barrier complained of herein was "readily achievable."

12 29. Per 42 **USC** §12181(9), "The term 'readily achievable' means easily  
 13 accomplishable and able to be carried out without much difficulty or expense." The statute and  
 14 attendant regulations define relative "expense" in relation to the total financial resources of the  
 15 entities involved, including any "parent" companies. Plaintiff alleges that properly repairing  
 16 each of the items that Plaintiff complains of herein is readily achievable, including, but not  
 17 limited to, correcting and repairing the items set forth in Paragraph 4 above.

18 The changes needed to remove barriers to access for the disabled were and are  
 19 "readily achievable" by the defendants under standards set forth under 42 **USC** §12181 of the  
 20 **Americans with Disabilities Act of 1990**. (Further, if it was not "readily achievable" for  
 21 defendants to remove all such barriers, defendants have failed to make the required services  
 22 available through alternative methods, although such methods are achievable as required by  
 23 42 **USC** §12181(b)(2)(a)(iv), (v).)

24 30. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC**  
 25 §12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**  
 26 **Rights Act of 1964** §204(a), (42 **USC** §2000a-3(a)), as Plaintiff is being subjected to  
 27 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable  
 28 grounds for believing that he is about to be subjected to discrimination in violation of

1 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of the  
 2 public facilities complained of herein for the purpose of entry and provision of goods and  
 3 service so long as defendants continue to apply eligibility criteria, policies, practices and  
 4 procedures to screen out and refuse to allow entry and service to persons with disabilities such  
 5 as Plaintiff's.

6 31. Defendants', and each of their acts and omissions of failing to provide barrier free  
 7 handicapped access for Plaintiff, were tantamount to interference, coercion or intimidation  
 8 pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** §12203):

9 It shall be unlawful to coerce, intimidate, threaten, or interfere with any  
 10 individual in the exercise or enjoyment of, or on account of his or her having  
 11 aided or encouraged any other individual in the exercise or enjoyment of, any  
 12 right granted or protected by this Act.

12 32. Per **Americans With Disabilities Act of 1990** §308(a)(1) (now 42 **USC** §12188),  
 13 "Nothing in this section shall require a person with a disability to engage in a futile gesture if  
 14 such person has actual notice that a person or organization covered by this title does not  
 15 intend to comply with its provisions." Pursuant to this last section, Plaintiff, on information and  
 16 belief, alleges that defendants have continued to violate the law and deny the rights of Plaintiff  
 17 and other disabled persons to access this public accommodation for the purpose of staying the  
 18 night. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

19 "...Where appropriate, injunctive relief shall also include requiring the  
 20 provision of an auxiliary aid or service, modifications of a policy, or provision of  
 21 alternative methods, to the extent required by this title."

22 33. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the **Civil Rights**  
 23 **Act of 1964** (42 **USC** §2000a-3(a), and pursuant to federal regulations adopted to implement  
 24 the **Americans with Disabilities Act of 1990**, including, but not limited to, an order granting  
 25 injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation expenses and  
 26 costs," are further specifically provided for by §505 of Title III.

27 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

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1 **II. SECOND CAUSE OF ACTION**

2 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL  
3 DISABILITIES (*California Health & Safety Code* §19955, *et seq.*)

4 34. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
5 the allegations contained in paragraphs 1 through 33 of this Complaint and incorporates them  
6 herein as if separately repled.

7 35. *California Health & Safety Code* §19955 provides in pertinent part:

8 The purpose of this part is to insure that public accommodations or  
9 facilities constructed in this state with private funds adhere to the provisions of  
10 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the  
11 *Government Code*. For the purposes of this part "public accommodation or  
12 facilities" means a building, structure, facility, complex, or improved area which is  
13 used by the general public and shall include auditoriums, hospitals, theaters,  
14 restaurants, hotels, motels, stadiums, and convention centers. When sanitary  
15 facilities are made available for the public, clients or employees in such  
16 accommodations or facilities, they shall be made available for the handicapped.

17 36. *California Health & Safety Code* §19956, which appears in the same chapter  
18 as §19955, provides in pertinent part, "accommodations constructed in this state shall conform  
19 to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the  
20 *Government Code*..." *California Health & Safety Code* §19956 was operative July 1, 1970,  
21 and is applicable to all public accommodations constructed or altered after that date. On  
22 information and belief, portions of "DEAN CREEK RESORT" and/or of its buildings, were  
23 constructed and/or altered after July 1, 1970, and substantial portions of said building had  
24 alterations, structural repairs, and/or additions made to such public accommodations after July  
25 1, 1970, thereby requiring said public accommodations and/or buildings to be subject to the  
26 requirements of Part 5.5, *California Health & Safety Code* §19955, *et seq.*, upon such  
27 alteration, structural repairs or additions per *California Health & Safety Code* §19959.

28 37. Pursuant to the authority delegated by *California Government Code* §4450, *et*  
seq., the State Architect promulgated regulations for the enforcement of these provisions.  
Effective January 1, 1982, Title 24 of the *California Administrative Code* adopted the  
California State Architect's Regulations and these regulations must be complied with as to any  
alterations and/or modifications of the "DEAN CREEK RESORT" occurring after that date.



1 Construction changes occurring prior to this date but after July 1, 1970, triggered access  
2 requirements pursuant to the "ASA" requirements, the **American Standards Association**  
3 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and  
4 modification of said building, all buildings and facilities covered were required to conform to  
5 each of the standards and specifications described in the **American Standards Association**  
6 **Specifications** and/or those contained in Title 24 of the **California Administrative Code**,  
7 (now known as Title 24, **California Code of Regulations**.)

8 38. Public facilities, such as "DEAN CREEK RESORT" are public accommodations  
9 or facilities within the meaning of **California Health & Safety Code** §19955, *et seq.*

10 39. It is difficult or impossible for persons with physical disabilities who use  
11 wheelchairs, canes, walkers and service animals to travel about in public to use a motel and  
12 RV park with the defects set forth in Paragraph 4 above as required by Title 24 of the  
13 **California Code of Regulations** and the **Americans with Disabilities Act Access**  
14 **Guidelines (ADAAG)**. Thus, when public accommodations fail to provide handicap accessible  
15 public facilities, persons with disabilities are unable to enter and use said facilities, and are  
16 denied full and equal access to and use of that facility that is enjoyed by other members of the  
17 general public.

18 40. Plaintiff, **JOE WARD**, and other similarly situated persons with physical  
19 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and  
20 service animals are unable to use public facilities on a "full and equal" basis unless each such  
21 facility is in compliance with the provisions of the **California Health & Safety Code** §19955, *et*  
22 *seq.* Plaintiff is a member of that portion of the public whose rights are protected by the  
23 provisions of **California Health & Safety Code** §19955, *et seq.*

24 41. The **California Health & Safety Code** was enacted "[t]o ensure that public  
25 accommodations or facilities constructed in this state with private funds adhere to the  
26 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*  
27 *Code*." Such public accommodations are defined to include motels and RV parks.

28 42. Plaintiff is further informed and believes that as of the date of filing this

1 Complaint, Defendants have not made accessible the facilities at the subject motel and RV  
2 park as set forth in Paragraph 4 above.

3 43. Plaintiff, **JOE WARD**, is informed and believes, and therefore alleges, that  
4 Defendants **ROBERT L. FENTON**, and **DOES ONE to FIFTY, inclusive**, and each of them,  
5 caused the subject buildings constituting "**DEAN CREEK RESORT**" to be constructed, altered  
6 and maintained in such a manner that persons with physical disabilities were denied full and  
7 equal access to, within and throughout said buildings and were denied full and equal use of  
8 said public facilities, and despite knowledge and actual and constructive notice to such  
9 Defendants that the configuration of the motel and RV park and/or buildings was in violation of  
10 the civil rights of persons with physical disabilities, such as Plaintiff. Such construction,  
11 modification, ownership, operation, maintenance and practices of such public facilities are in  
12 violation of law as stated in Part 5.5, **California Health & Safety Code** §19955, *et seq.*, and  
13 elsewhere in the laws of California.

14 44. On information and belief, the subject building constituting the public facilities of  
15 "**DEAN CREEK RESORT**" denied full and equal access to Plaintiff and other persons with  
16 physical disabilities in other respects due to non-compliance with requirement of Title 24 of the  
17 **California Code of Regulations** and **California Health & Safety Code** §19955, *et seq.*

18 45. The basis of Plaintiff's aforementioned information and belief is the various  
19 means upon which Defendants must have acquired such knowledge, including, but not limited  
20 to, this lawsuit, other access lawsuits, communications with operators of other motel and RV  
21 parks and other property owners regarding denial access, communications with Plaintiff and  
22 other persons with disabilities, communications with other patrons who regularly visit there,  
23 communications with owners of other businesses, notices and advisories they obtained from  
24 governmental agencies through the mails, at seminars, posted bulletins, television, radio,  
25 public service announcements, or upon modification, improvement, alteration or substantial  
26 repair of the subject premises and other properties owned by these Defendants, newspaper  
27 articles and trade publications regarding the **Americans with Disabilities Act of 1990** and  
28 other access law, and other similar information. The scope and means of the knowledge of

1 each defendant is within each defendant's exclusive control and cannot be ascertained except  
2 through discovery.

3 46. As a result of Defendants' acts and omissions in this regard, Plaintiff has been  
4 required to incur legal expenses and hire attorneys in order to enforce his civil rights and  
5 enforce provisions of the law protecting access for persons with physical disabilities and  
6 prohibiting discrimination against persons with physical disabilities, and to take such action  
7 both in his own interests and in order to enforce an important right affecting the public interest.  
8 Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable attorneys' fees  
9 incurred, pursuant to the provisions of the **California Code of Civil Procedure** §1021.5.  
10 Plaintiff additionally seeks attorneys' fees pursuant to **California Health & Safety Code**  
11 §19953 and **California Civil Code** §§54.3 and 55.

12 47. Defendants, and each of them, at times prior to and including September 2,  
13 2009, and continuing to the present time, knew that persons with physical disabilities were  
14 denied their rights of equal access to all portions of this public facility. Despite such  
15 knowledge, Defendants failed and refused to take steps to comply with the applicable access  
16 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby  
17 suffered by Plaintiff, **JOE WARD**, and other similarly situated persons with disabilities,  
18 including the specific notices referred to in paragraph 43 of this Complaint. Defendants have  
19 failed and refused to take action to grant full and equal access to persons with physical  
20 disabilities in the respects complained of hereinabove. Defendants and each of them have  
21 carried out a course of conduct of refusing to respond to, or correct complaints about, denial of  
22 handicap access. Such actions and continuing course of conduct by Defendants, evidence  
23 despicable conduct in conscious disregard for the rights or safety of Plaintiff and of other  
24 similarly situated persons, justifying an award of treble damages pursuant to **California Civil**  
25 **Code** §54.3.

26 48. Defendants' actions have also been oppressive to persons with physical  
27 disabilities and of other members of the public, and have evidenced actual or implied malicious  
28 intent toward those members of the public, such as Plaintiff and other persons with physical



1 disabilities who have been denied the proper access they are entitled to by law. Further,  
2 Defendants' refusals on a day-to-day basis to correct these problems evidence despicable  
3 conduct in conscious disregard for the rights of Plaintiff and other members of the public with  
4 physical disabilities.

5 49. Plaintiff prays for an award of treble damages against Defendants, and each of  
6 them, pursuant to **California Civil Code** §54.3 in an amount sufficient to make a more  
7 profound example of Defendants and discourage owners, operators, franchisers and  
8 franchisees of other public facilities from willful disregard of the rights of persons with physical  
9 disabilities.

10 50. As a result of the actions and failure of Defendants, and each of them, and as a  
11 result of the failure to provide proper accessible public facilities, Plaintiff, **JOE WARD**, was  
12 denied his civil rights, including his right to full and equal access to public facilities, was  
13 embarrassed and humiliated, suffered physical, psychological and mental injuries and  
14 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,  
15 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and  
16 naturally associated with a person with a physical disability being denied access to a public  
17 accommodation.

18 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

19 **III. THIRD CAUSE OF ACTION**  
20 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**  
21 **(California Civil Code §§54, 54.1 and 54.3)**

22 51. Plaintiff repleads and incorporates by reference as if fully set forth again herein,  
23 the allegations contained in paragraphs 1 through 50 of this Complaint and incorporates them  
24 herein as if separately repiled.

25 52. The public facilities above-described constitute public facilities and public  
26 accommodations within the meaning of **California Health & Safety Code** §19955, *et seq.*, and  
27 are facilities to which members of the public are invited. The aforementioned acts and  
28 omissions of defendants, and each of them, constitute a denial of equal access to and use and  
enjoyment of these facilities by persons with disabilities, including Plaintiff, **JOE WARD**. Said

1 acts and omissions are also in violation of provisions of Title 24 of the **California Code of**  
 2 **Regulations.**

3 53. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and the  
 4 denial by defendants of such rights and entitlements are set forth in **California Civil Code**  
 5 §§54, 54.1 and 54.3, to wit:

6 Individuals with disabilities shall have the same right as the...general  
 7 public to full and free use of the streets, highways, sidewalks, walkways, public  
 8 buildings, public facilities, and other public places. **California Civil Code §54(a).**

9 Individuals with disabilities shall be entitled to full and equal access, as  
 10 other members of the general public, to accommodations, advantages, facilities,  
 11 and privileges of all common carriers, airplanes, motor vehicles, railroad trains,  
 12 motor buses, streetcars, boats, or any other public conveyances or modes of  
 13 transportation (whether private, public, franchised, licensed, contracted, or  
 14 otherwise provided), telephone facilities, adoption agencies, private schools,  
 15 hotels, lodging places, places of public accommodation, amusement or resort,  
 16 and other places to which the general public is invited, subject only to the  
 17 conditions and limitations established by law, or state or federal regulation, and  
 18 applicable alike to all persons. **California Civil Code §54.1(a).**

19 54. On or about September 2, 2009, Plaintiff, **JOE WARD**, suffered violations of  
 20 **California Civil Code §§54 and 54.1** in that he was denied full and equal enjoyment of the  
 21 goods, services, facilities and privileges of said **DEAN CREEK RESORT**, as set forth in  
 22 paragraph 4 above.

23 Plaintiff was also denied full and equal access to other particulars, including, but not  
 24 limited to, those described hereinabove. Plaintiff was also denied use of facilities that he was  
 25 entitled to under Title III of the **Americans with Disabilities Act of 1990.**

26 55. As a result of the denial of full and equal enjoyment of the goods, services,  
 27 facilities and privileges of defendants' **DEAN CREEK RESORT** due to the acts and omissions  
 28 of defendants, and each of them, in owning, operating and maintaining this subject public  
 facility, Plaintiff suffered violations of his civil rights, including, but not limited to, rights under  
**California Civil Code §§54, 54.1, and 54.3**, and has and will suffer emotional distress, mental  
 distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment,  
 anger, chagrin, disappointment and worry, expectedly and naturally associated with a disabled  
 person's denial of full and equal enjoyment of goods, services, privileges, etc. all to his

1 damages as prayed hereinafter in an amount within the jurisdiction of the court. Defendants'  
2 actions and omissions to act constituted discrimination against Plaintiff on the sole basis that  
3 Plaintiff is disabled.

4 56. Plaintiff seeks damages for the violation of his rights as a disabled person on or  
5 about September 2, 2009, according to proof, pursuant to **California Civil Code** §54.3,  
6 including a trebling of all statutory and actual damages, general and special, available pursuant  
7 to **California Civil Code** §54.3(a).

8 57. As a result of defendants' acts and omissions in this regard, Plaintiff **JOE WARD**  
9 has been required to incur legal expenses and hire attorneys in order to enforce his rights and  
10 enforce provisions of the law protecting the full and equal enjoyment of goods, services,  
11 facilities, privileges of public facilities by the disabled, and those individuals associated with or  
12 accompanied by a person with disabilities, and prohibiting discrimination against the disabled.  
13 Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable attorneys' fees incurred  
14 pursuant to the provisions of **California Civil Code** §55. Additionally, Plaintiff's lawsuit is  
15 intended not only to obtain compensation for damages to Plaintiff, but also to compel the  
16 defendants to make their goods, services, facilities and privileges available and accessible to  
17 all members of the public with physical disabilities, justifying public interest attorneys' fees  
18 pursuant to the provisions of **California Code of Civil Procedure** §1021.5.

19 58. The acts and omissions of defendants in failing to provide the required  
20 accessible facilities subsequent to the enactment date and compliance date of the **Americans**  
21 **with Disabilities Act of 1990**, and refusal to make remedial modifications and alterations to its  
22 handicapped parking, handicapped signage, pathways, and other elements as hereinabove  
23 stated, after being notified by patrons before and after the time of Plaintiff's visit and injuries,  
24 on or about September 2, 2009, and all times prior thereto with the knowledge that persons  
25 with disabilities would enter defendants' premises, the reason given therefor, was an  
26 established policy, practice and procedure of refusing and denying entry, thereby denying  
27 services to a person with disabilities and the companions thereof, evidence malice and  
28 oppression toward Plaintiff and other disabled persons.



59. Plaintiff seeks injunctive relief pursuant to **California Civil Code** §55 to require Defendants to comply with federal and state access regulations.

60. Defendants have failed to establish a nondiscriminatory criteria, policy, practice and procedure for entry into said "**DEAN CREEK RESORT**" as hereinabove described.

61. As a result of defendants' continuing failure to provide for the full and equal enjoyment of goods, services, facilities and privileges of said "**DEAN CREEK RESORT**" as hereinabove described, Plaintiff has continually been denied his rights to full and equal enjoyment of the subject motel and RV park, as it would be a "futile gesture" to attempt to patronize said "**DEAN CREEK RESORT**" with the discriminatory policy in place as hereinabove described.

62. The acts and omissions of defendants as complained of herein in failing to provide the required accessible facilities subsequent to the enactment date and compliance date of the **Americans with Disabilities Act of 1990** and refusal to make remedial modifications and alternations to the architectural barriers as stated herein and in failing to establish practices, policies and procedures to allow safe access by persons who are disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully excluding Plaintiff and other members of the public who are disabled from full and equal enjoyment of the subject "**DEAN CREEK RESORT**" as hereinabove described. Such acts and omissions are the continuing cause of humiliation and mental and emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior and second class citizen and serve to discriminate against him on the sole basis that he is disabled. Plaintiff is unable, so long as such acts and omissions of defendants continue, to achieve full and equal enjoyment of the goods and services of said "**DEAN CREEK RESORT**" as described hereinabove. The acts of defendants have legally caused and will continue to cause irreparable injury to Plaintiff if not enjoined by this court.

63. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any continuing refusal by defendants to permit entry to said "**DEAN CREEK RESORT**" and to serve Plaintiff or others similarly situated, and to require defendants to comply forthwith with

the applicable statutory requirements relating to the full and equal enjoyment of goods and services as described hereinabove for disabled persons. Such injunctive relief is provided by **California Civil Code** §55. Plaintiff further requests that the court award statutory costs and attorneys' fees to Plaintiff pursuant to **California Civil Code** §55 and **California Code of Civil Procedure** §1021.5, all as hereinafter prayed for.

WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees and costs of suit, as allowed by statute and according to proof.

**IV. FOURTH CAUSE OF ACTION**  
**VIOLATIONS OF UNRUH CIVIL RIGHTS ACT**  
**(California Civil Code §§51 and 51.5)**

64. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 63 of this Complaint and incorporates them herein as if separately repled.

65. Defendants' acts and omissions as specified with regard to the discriminatory treatment of Plaintiff, **JOE WARD**, on the basis of his disabilities, have been in violation of **California Civil Code** §§51 and 51.5, the **Unruh Civil Rights Act**, and have denied to Plaintiff his rights to "full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever."

66. **California Civil Code** §51 also provides that "[a] violation of the right of any individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall also constitute a violation of this section."

67. **California Civil Code** §51.5 also provides that

"[n]o business establishment of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers."

68. As a result of the violation of Plaintiff's civil rights protected by **California Civil Code** §§51 and 51.5, Plaintiff is entitled to the rights and remedies of **California Civil Code** §52, including a trebling of actual damages (defined by **California Civil Code** §52(h) to mean

1 "special and general damages"), as well as reasonable attorneys' fees and costs, as allowed  
 2 by statute, according to proof.

3 WHEREFORE, Plaintiff prays that this court award damages and provide relief as  
 4 follows:

#### 5 PRAYER FOR RELIEF

6 Plaintiff prays that this court award damages and provide relief as follows:

7 1. Grant injunctive relief requiring that defendants establish a non-discriminatory  
 8 criteria policy, practice and procedure permitting entry into the **DEAN CREEK RESORT** in  
 9 Redway, California, for the purpose of obtaining the goods and services accorded therein  
 10 according to **California Civil Code** §§51, 51.5, 52, 54, 54.1, 54.3, and 55, *et seq.*, and Title III  
 11 of the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that  
 12 Defendants repair and render safe to disabled persons, and otherwise make accessible, all  
 13 public areas of the motel and RV park, including, but not limited to, each of the barriers to  
 14 access identified in Paragraph 4, above, and make such facilities "readily accessible to and  
 15 usable by individuals with disabilities" according to the standards of Title 24 of the **California**  
 16 **Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and Title III of the  
 17 **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting  
 18 operation of the **DEAN CREEK RESORT** located in Redway, California, as a public facility until  
 19 Defendants provide full and equal enjoyment of goods and services as described hereinabove  
 20 to disabled persons, including Plaintiff;

21 2. General damages according to proof;

22 3. Statutory and "actual" damages, including general damages and special  
 23 damages, according to proof, pursuant to **California Civil Code** §§52, and 54.3, and that  
 24 these damages be trebled;

25 4. Prejudgment interest on all compensatory damages;

26 5. Remedies and Procedures available under **Americans with Disabilities Act of**  
 27 **1990** §§107, 203 and 308;

28 6. Award Plaintiff all litigation expenses, all costs of this proceeding and all

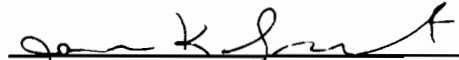


1 reasonable attorneys' fees as provided by law, including, but not limited to, those recoverable  
2 pursuant to the provisions of **California Civil Code** §§52, 54.3, and 55, **California Code of**  
3 **Civil Procedure** §1021.5, and **Americans with Disabilities Act of 1990** §308 of Title III; and

4 7. Grant such other and further relief as the court may deem just and proper.

5 **SINGLETON LAW GROUP**

6 Dated: February 25, 2010


7   
8 Jason K. Singleton,  
Richard E. Grabowski, Attorneys for  
Plaintiff, **JOE WARD**

9  
10 **REQUEST FOR JURY TRIAL**

11 Plaintiff hereby requests a jury for all claims for which a jury is permitted.

12 **SINGLETON LAW GROUP**

13 Dated: February 25, 2010

14   
15 Jason K. Singleton,  
Richard E. Grabowski, Attorneys for  
Plaintiff, **JOE WARD**